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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10/748,806

12/30/2003

Gregory Alan Erickson

J6695(C)

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201 7590 01/18/2007
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EXAMINER

CHEVALIER, ALICIA ANN

ART UNIT

PAPER NUMBER

1772

SHORTENED STATUTORY PERIOD OF RESPONSE	MAIL DATE	DELIVERY MODE
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3 MONTHS

01/18/2007

PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

If NO period for reply is specified above, the maximum statutory period will apply and will expire 6 MONTHS from the mailing date of this communication.

Office Action Summary

Application No.

10/748,806

Applicant(s)

ERICKSON, GREGORY ALAN

Examiner

Alicia Chevalier

Art Unit

1772

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 13 November 2006.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-10 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-10 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- ☒ Notice of References Cited (PTO-892)
- ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- ☐ Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date _____
- ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____
- ☐ Notice of Informal Patent Application
- ☐ Other: _____

RESPONSE TO AMENDMENT

1. Claims 1-10 are pending in the application.
2. Amendments to the abstract and claims, filed on November 13, 2006, have been entered in the above-identified application.

REJECTIONS

3. **The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.**

Claim Rejections - 35 USC § 112

4. The following is a quotation of the first paragraph of 35 U.S.C. 112:

The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

5. Claim 10 is rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the written description requirement. The claim(s) contains subject matter which was not described in the specification in such a way as to reasonably convey to one skilled in the relevant art that the inventor(s), at the time the application was filed, had possession of the claimed invention. New claim 10 recites "wherein a plurality of the orifices are approximately 90 to the normal of the applicator surface." The examiner is unable to find support for this limitation in the specification, therefore it is considered new matter.

Claim Rejections - 35 USC § 102

6. Claims 1 and 7-9 are rejected under 35 U.S.C. 102(b) as being anticipated by Allen et al. (U.S. Patent No. 5,547,302).

Allen discloses a head for a package for dispensing a product which is selected from the consisting of a cream, a soft solid and a solid (cookie dough, *col. 1, lines 1-2*). The dispenser head comprises an array of dividers comprising a tapered end, which is disposed toward the product contained within the package, and a blunt end, which is disposed away from the product contained within the package (*figure 6*). At least a portion of the orifices are disposed in the applicator head at acute angles to the cross section of the package normal to such flow, since the figures show the orifices to be tapered. The array of dividers forms two or more orifices which afford the product a surface area for being dispensed, which is about 40% to about 120%, of a cross section of the package normal to flow of product out of the package (*figures 2 and 6*). At least some of the blunt ends are deemed to form at least part of an applicator surface. The applicator surface has an application surface of about 10 to about 70 %, more specifically about 20-50%, of a cross-section of the package normal to the flow of product (*figures 1-3*). The dispenser head comprises a plastic selected from the group consisting of polypropylenes, high density polyethylenes and thermoplastic elastomers (*col. 9, lines 1-12*). Figures 2 and 6 show the claimed spiral structure from claims 7-9 (*col. 2, lines 38 though col. 3, line 20*).

7. Claims 1-6 are rejected under 35 U.S.C. 102(b) as being anticipated by Dornbusch et al. (U.S. Patent No. 5,547,302).

Dornbusch discloses a head for a package for dispensing a product which is selected from the consisting of a cream, a soft solid and a solid (*col. 1, lines 8-13*). The dispenser head

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comprises an array of dividers comprising a tapered end which is disposed toward the product contained within the package and a blunt end which is disposed away from the product contained within the package (*col. 3, lines 15-64 and figure 3*). At least a portion of the dividers are disposed in the applicator head at acute angles to the cross section of the package normal to such flow (*col. 3, lines 15-64 and figures 1-3*). The array of dividers forms two or more orifices which afford the product a surface area for being dispensed, which is about 40% to about 120%, more specifically about 85-120%, and most specifically about 90-120% of a cross section of the package normal to flow of product out of the package (*figures 1-3*). At least some of the blunt ends are deemed to form at least part of an applicator surface. The applicator surface has an application surface of about 10 to about 70 %, more specifically about 20-50%, of a cross-section of the package normal to the flow of product (*figures 1-3*). The dispenser head comprises a plastic selected from the group consisting of polypropylenes, high density polyethylenes and thermoplastic elastomers (*col. 9, lines 1-12*).

ANSWERS TO APPLICANT'S ARGUMENTS

8. Applicant's arguments in the response filed November 13, 2006 regarding the previous rejections of record have been considered but are moot due to the new grounds of rejection.

Conclusion

9. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

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A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

10. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Alicia Chevalier whose telephone number is (571) 272-1490. The examiner can normally be reached on Monday through Friday from 8:00 am to 4:00 pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Harold Pyon, can be reached on (571) 272-1498. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).


ALICIA CHEVALIER
PRIMARY EXAMINER

1-9-07